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LOCKHEED MARTIN CORPORATION

17 UNITED STATES DISTRICT COURT

18 SOUTHERN DISTRICT OF CALIFORNIA

19 JENIFER WILLIAMS, an individual, on
20 behalf of herself, and on behalf of all persons
similarly situated,

21 Plaintiff,

22 vs.

23 LOCKHEED MARTIN CORPORATION, a
24 California Corporation, and Does 1 through
10,

25 Defendants.
26
27

Case No. 3:09-cv-01669-WQH-POR

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANT'S MOTION TO STRIKE**

[Fed. R. Civ. Proc. 12(f)]

Assigned To:
The Honorable William Q. Hayes

Date: September 28, 2009
**NO ORAL ARGUMENT UNLESS
REQUESTED BY THE COURT**
Time: 11:00 a.m.
Room: 4

1 **I. INTRODUCTION**

2 Plaintiff Jenifer Williams (“Plaintiff”) alleges that she was employed by Defendant
 3 Lockheed Martin Corporation (“Lockheed Martin” or “Defendant”) as a “Network Data
 4 Communications Senior Analyst” from November 2008 until June 2009, when her employment
 5 was terminated. Complaint, ¶ 4. Plaintiff now seeks to bring a class and collective action on
 6 behalf of all “Systems Administrators,” “Network Telecommunications Analysts,” “Network
 7 Data Communications Analysts,” “Network Data Communications Senior Analysts,” and
 8 “Desktop Support” employees who were classified as exempt and employed in California by
 9 Lockheed Martin. Plaintiff alleges that all employees in these various alleged positions were
 10 misclassified as exempt employees and not paid overtime wages, not provided meal and rest
 11 periods, and not provided accurate itemized wage statements, in alleged violation of various
 12 provisions of the California Labor Code. Plaintiff also alleges that former employees in the
 13 alleged class were not timely paid final wages upon termination of employment. Plaintiff also
 14 contends that these alleged Labor Code violations constitute unlawful and unfair business
 15 practices under section 17200, *et seq.* of the California Business and Professions Code, the Unfair
 16 Competition Law (“UCL”). Finally, Plaintiff seeks to pursue a collective action under the Fair
 17 Labor Standards Act (“FLSA”) on behalf of members of the alleged California class.

18 Among other forms of recovery, Plaintiff seeks injunctive relief for these alleged wage
 19 and hour violations. *See, e.g.*, Complaint, Prayer, ¶ 1(B). Plaintiff, however, has no current
 20 relationship with and is not employed by Lockheed Martin; specifically, she alleges that her
 21 employment ended in June of 2009. *See* Complaint, ¶ 4. As a result, Plaintiff cannot establish a
 22 likelihood of substantial and immediate irreparable injury justifying an injunction. Plaintiff also
 23 would not stand to benefit from any injunctive relief addressing the alleged wage and hour
 24 violations. Because she lacks Article III standing to bring any claim for injunctive relief, all such
 25 requests for injunctive relief should be stricken from the Complaint. Moreover, private
 26 individuals cannot seek injunctive relief under the FLSA.

27 Plaintiff premises her UCL claim in part upon Labor Code sections 203 and 226, and
 28 seeks penalties and damages under these statutes as part of her UCL claim. However, restitution

1 is the only monetary remedy available under the UCL, and penalties and damages cannot be
 2 recovered by a private litigant under the UCL. As a result, Plaintiff's claims for penalties and
 3 damages based on the UCL should be stricken from the Complaint. Further, Plaintiff's UCL
 4 claim seeks not only restitution, but also disgorgement of "ill-gotten gains" into a fluid recovery
 5 fund. The latter remedy should be stricken from the Complaint because restitution is the only
 6 monetary remedy available under the UCL, and the California Supreme Court has expressly held
 7 that disgorgement of profits into a fluid recovery fund is not available in a UCL action.

8 Plaintiff's second cause of action seeks not only overtime compensation, but also
 9 "regular" compensation under various Labor Code sections. Similarly, Plaintiff's sixth cause of
 10 action seeks both "regular compensation" and overtime compensation under the FLSA. These
 11 claims fail, as a matter of law, to the extent that they allege Defendant failed to pay "regular"
 12 compensation. *See, e.g.*, Complaint, ¶¶ 73, 118. "Regular compensation" is not recoverable
 13 under either the Labor Code or the FLSA. Recovery of wages under both the Labor Code and the
 14 FLSA is limited to minimum wages and overtime pay. Thus, Plaintiff's references to unpaid
 15 regular compensation under her second and sixth causes of action must be stricken.

16 Finally, Plaintiff's Complaint contains stray references to the indemnification of business
 17 expenses and Labor Code section 450. *See* Complaint, ¶¶ 39(g), 51; Prayer, ¶ 2(G). However,
 18 Plaintiff does not plead any facts whatsoever with respect to these issues. Accordingly, these
 19 references should be stricken from the Complaint.

20 **II. ARGUMENT**

21 **A. The Standard for Granting a Motion to Strike**

22 Under Rule 12(f) of the Federal Rules of Civil Procedure, a defendant may move to strike
 23 language that seeks relief that is not recoverable as a matter of law. *Estate of Migliaccio v.*
 24 *Midland Life Ins. Co.*, 436 F. Supp. 2d 1095, 1100 (C.D. Cal. 2006) (citing *Tapley v. Lockwood*
 25 *Green Engineers, Inc.*, 502 F.2d 559, 560 (8th Cir. 1974)). The grounds for a motion to strike
 26 must appear on the face of the complaint or from matters the court may judicially notice. *S.E.C.*
 27 *v. Sands*, 902 F.Supp. 1149, 1165 (C.D. Cal. 1995). The function of a motion to strike is to avoid
 28 the expenditure of time and money that might arise from litigating spurious issues by dispensing

1 with those issues before trial. *Sidney-Vinstein v. A.H. Robins, Co.*, 697 F.2d 880, 885 (9th Cir.
2 1983).

3 **B. Plaintiff's Demand for and All References to Injunctive Relief Should Be**
4 **Stricken Because, As a Former Employee, She Has No Standing to Seek**
5 **Injunctive Relief**

6 To have standing to bring a claim under Article III of the United States Constitution, a
7 plaintiff must satisfy three elements: (1) she must have suffered an injury in fact that is (a)
8 concrete and particularized and (b) actual or imminent; (2) there must be a causal connection
9 between the injury and the conduct complained of; and (3) it must be likely that the injury will be
10 redressed by the relief sought. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). In
11 addition, a plaintiff seeking an injunction must show a likelihood of substantial and immediate
12 irreparable injury and the inadequacy of remedies at law. *O'Shea v. Littleton*, 414 U.S. 488, 502
(1974).

13 1. **To Have Standing To Seek Injunctive Relief, Plaintiff Must Be A Current**
14 **Employee Of Defendant**

15 In *Walsh v. Nevada Dep't of Human Resources*, 471 F.3d 1033 (9th Cir. 2006), the
16 plaintiff sued her former employer for disability discrimination. Similar to Plaintiff here, she
17 sought both damages and "injunctive relief, to force the defendant to adopt and enforce lawful
18 policies regarding discrimination based on disability." *Id.* at 1035. The Ninth Circuit affirmed the
19 district court's granting of judgment on the pleadings in favor of the former employer, in part on
20 the ground that the plaintiff lacked standing to request injunctive relief. *Id.* at 1036-37. The
21 Ninth Circuit held that the plaintiff could not satisfy the third element to establish standing—i.e.,
22 likely redress by relief sought—because she "would not stand to benefit from an injunction
23 requiring the anti-discriminatory policies she requests at her former place of work" as she was
24 "no longer an employee" and "[t]here is no indication in the complaint that [the plaintiff] has any
25 interest in returning to work for [defendant]." *Id.* at 1037.

26 In *Hangarter v. Provident Life & Accident Ins. Co.*, 373 F.3d 998 (9th Cir. 2004), the
27 plaintiff sued her insurance company for terminating her disability benefits. *Id.* at 1004-05. The
28 plaintiff alleged a violation of California Business and Professions Code section 17200 and

1 breach of contract, among other things. *Id.* at 1005. The district court granted the plaintiff a
 2 permanent injunction under section 17200. *Id.* The Ninth Circuit reversed, stating:

3 The district court erred in concluding that Hangarter had Article III standing to
 4 pursue injunctive relief under [section 17200]. "Article III standing requires an
 5 injury that is actual or imminent, not conjectural or hypothetical. In the context of
 6 injunctive relief, the plaintiff must demonstrate a *real or immediate threat* of an
 7 irreparable injury." . . . *Hangarter currently has no contractual relationship with*
Defendants and therefore is not personally threatened by their conduct.

8 *Id.* at 1021-22 (emphasis added).

9
 10 2. In Determining Whether A Plaintiff May Seek Injunctive Relief, It Does
 11 Not Matter Whether She Might Otherwise Have Standing To Bring A
 12 Claim For Non-Equitable Relief

13 In determining whether a plaintiff may seek injunctive relief, it does not matter whether
 14 she might otherwise have standing to bring a claim for non-equitable relief. For example, in *City*
 15 *of L.A. v. Lyons*, 461 U.S. 95 (1983), the plaintiff sued the City of Los Angeles for excessive
 16 force and police brutality for use of a chokehold. *Id.* at 97-98. The plaintiff also sought
 17 injunctive relief against the use of chokeholds. *Id.* at 98. The district court denied the claim for
 18 injunctive relief, and the Court of Appeals reversed, opining that there was a sufficient likelihood
 19 that the plaintiff would be stopped again and subject to a chokehold. *Id.* at 99. The U.S. Supreme
 20 Court disagreed:

21 [The plaintiff] fares no better if it be assumed that his pending damages suit
 22 affords him Article III standing to seek an injunction as a remedy for the claim
 23 arising out of the October 1976 events. The equitable remedy is unavailable
 24 absent a showing of irreparable injury, a requirement that cannot be met where
 25 there is no showing of any real or immediate threat that the plaintiff will be
 26 wronged again—a "likelihood of substantial and immediate irreparable injury."
 27 *O'Shea v. Littleton*, 414 U.S., at 502, 94 S.Ct., at 679. The speculative nature of
 28 [the plaintiff's] claim of future injury requires a finding that this prerequisite of
 equitable relief has not been fulfilled.

Id. at 111; *see also Hodgers-Durgin v. de la Vina*, 199 F.3d 1037, 1044 (9th Cir. 1999) (holding
 that the plaintiffs did not have standing to seek an injunction against racial profiling at the
 Mexican-American border, because they were not sufficiently likely to be pulled over again by
 the Border Patrol).

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3. The Named Plaintiff Herself, Not Just Unnamed Class Members, Needs To Be Entitled To Seek Injunctive Relief

That Plaintiff is seeking to represent a class of current and former employees does not give her standing to seek injunctive relief. In *Hodgers-Durbin v. de la Vina*, the Ninth Circuit held:

Unless the named plaintiffs are themselves entitled to seek injunctive relief, they may not represent a class seeking that relief. ***Any injury unnamed members of this proposed class may have suffered is simply irrelevant to the question whether the named plaintiffs are entitled to the injunctive relief they seek.***

199 F.3d at 1044-45 (emphasis added). The Ninth Circuit emphasized the important function that “the imminent-harm requirement serves in limiting injunctive relief.” *Id.* at 1044; *see also O’Shea v. Littleton*, 414 U.S. 488, 494-96 (1974) (holding that the named plaintiffs in a class action seeking only injunctive relief did not have standing under Article III because they were not currently affected by the defendants’ adverse acts and that “if none of the ***named plaintiffs*** purporting to represent a class establishes the requisite of a case or controversy with the defendants, none may seek relief on behalf of himself or any other member of the class”) (emphasis added).

4. Because Plaintiff Is A Former Employee, Her Requests For Injunctive Relief Should All Be Stricken

Here, Plaintiff seeks “[a]n order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct” and requests “[t]hat Defendants be enjoined from further violations of the Fair Labor Standards Act.” Complaint, Prayer, ¶¶ 1(B), 4(D). Yet, as with the plaintiffs in *Walsh* and *Hangarter*, Plaintiff has no standing to seek injunctive relief because she is no longer employed by Lockheed Martin and there is no “real or immediate threat” that she will suffer any “substantial and immediate irreparable injury” as a result of Lockheed Martin’s allegedly unlawful conduct. *See* Complaint, ¶ 4. Moreover, as a former employee, she lacks “standing to sue for injunctive relief from which she would not likely benefit.” *Walsh*, 471 F.3d at 1037. Similarly, Plaintiff has no grounds to establish irreparable harm, given that all of her alleged claims can be redressed by monetary recovery. Thus, all language requesting or referencing injunctive relief should be stricken from

1 the Complaint, as described in detail in Defendant's Notice of Motion.

2 5. Private Individuals Cannot Seek Injunctive Relief Under The FLSA

3 Plaintiff's request for an injunction under the FLSA should be stricken on the separate,
4 independent ground that private individuals cannot seek injunctive relief under the FLSA. The
5 FLSA provides that, "[e]xcept as provided in section 212 of this title [which contains child labor
6 provisions], the Administrator shall bring all actions under section 217 of this title [the injunctive
7 relief provision] to restrain violations of this chapter [the FLSA]." See 29 USC § 211(a). The
8 "Administrator" is the Administrator of the Wage and Hour Division in the Department of Labor.
9 See 29 USC § 204(a). Accordingly, private individuals such as Plaintiff cannot seek injunctive
10 relief under the FLSA. *Lorillard v. Pons*, 434 U.S. 575, 581 (1978) ("in construing the
11 enforcement sections of the FLSA, the courts had consistently declared that injunctive relief was
12 not available in suits by private individuals but only in suits by the Secretary") (citing *Roberg v.*
13 *Henry Phipps Estate*, 156 F.2d 958, 963 (2d Cir. 1946) ("The trial court correctly dismissed the
14 prayer for injunction . . . by one of the plaintiffs on the ground that the Administrator has
15 exclusive authority to bring such an action"); *Bowe v. Judson C. Burns, Inc.*, 137 F.2d 37, 39 (3d
16 Cir. 1943) ("it is plain from this language that the right of the administrator to bring an action for
17 injunctive relief is an exclusive right"); *Powell v. Wash. Post Co.*, 267 F.2d 651, 652 (D.C. Cir.
18 1959)).

19 C. Plaintiff Cannot Recover Penalties Or Damages Under the UCL And
20 Therefore Her Attempts To Do So Must Be Stricken

21 Plaintiff's first cause of action is brought under the UCL. Plaintiff alleges that various
22 violations of the Labor Code by Defendant constitute "deceptive, unfair and unlawful business
23 practices" in violation of the UCL, including Labor Code provisions that allow for the recovery of
24 penalties, specifically Labor Code sections 203 and 226. Complaint, ¶¶ 53, 26(f), 26(g). Plaintiff
25 expressly seeks the recovery of penalties under the UCL. Complaint, ¶¶ 21, 55.

26 1. The UCL Does Not Permit The Recovery Of Penalties or Damages

27 Penalties and damages cannot be awarded to a private litigant under the UCL. State and
28 federal courts have repeatedly held that the UCL limits a private plaintiff's monetary remedy to

1 restitution. *Cortez v. Purolator Air Filtration Prods. Co.*, 23 Cal.4th 163, 176 (2000); *Kasky v.*
 2 *Nike, Inc.*, 27 Cal.4th 939, 950 (2002); *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal.4th
 3 1134, 1146 (2003) (*quoting Kraus v. Trinity Mgm't Serv's.*, 23 Cal.4th 116, 129 (2000)). A
 4 private plaintiff is *not* permitted to sue for civil penalties or damages. *Korea Supply*, 29 Cal.4th
 5 at 1144 (“A UCL action is equitable in nature; damages cannot be recovered. . . . Civil penalties
 6 may be assessed in *public* unfair competition actions . . .”) (emphasis added) (citation omitted).¹
 7 The California Supreme Court has explained that under the UCL, recovery is limited to “the
 8 return of money or property that was once in [a plaintiff’s] possession” or money in which a
 9 plaintiff has a “vested interest.” *Id.* at 1149. The Supreme Court has repeatedly held that the
 10 right to a penalty does not vest until it has been enforced. *Murphy v. Kenneth Cole Prods., Inc.*,
 11 40 Cal.4th 1094, 1108 (2007); *People v. Durbin*, 64 Cal.2d 474, 479 (1966) (“No person has a
 12 vested right in an unenforced penalty . . .”); *see also Huntingdon Life Sciences, Inc. v. Stop*
 13 *Huntingdon Animal Cruelty USA, Inc.*, 129 Cal.App.4th 1228, 1262 (2005) (“Unlike a common
 14 law right, a ‘statutory remedy does not vest *until final judgment.*’”). Therefore, all references to
 15 penalties or damages in connection with Plaintiff’s UCL claim must be stricken.

16 2. Plaintiff cannot pursue a claim under section 203 for waiting time penalties
 17 under the UCL

18 Plaintiff alleges that Defendant’s failure to timely pay wages upon termination pursuant to
 19 Labor Code section 203 constitutes a violation of the UCL. *See* Complaint, ¶ 29(g). Labor Code
 20 section 203 states:

21 If an employer willfully fails to pay . . . in accordance with Sections 201 . . . [or]
 22 202 . . . any wages of an employee who is discharged or who quits, the wages of
 the employee shall continue *as a penalty* . . . but the wages shall not continue for
 more than 30 days. (emphasis added)

23 Thus, section 203 is solely a penalty provision. In *Tomlinson v. IndyMac Bank F.S.B.*,
 24 359 F.Supp.2d 891, 895 (C.D. Cal. 2005), the court held that such waiting time penalties punish
 25 the employer for willfully withholding wages and, therefore, are penalties that cannot be
 26 recovered under the UCL. *See also Murphy*, 40 Cal.4th at 1108-109 (section 203 is a penalty

27
 28 ¹ A public unfair competition action is an action brought by a public prosecutor on behalf of
 the state. *See* Cal. Bus. & Prof. Code §17204.

statute). As such, Plaintiff's reference to section 203 in support of her UCL claim must also be stricken from the Complaint, as there is no reason to cite to section 203 except for the purpose of seeking penalties.

D. Plaintiff Cannot Recover "Disgorgement Of Defendant's Ill-Gotten Gains Into A Fluid Fund" Under the UCL And All Such References Should Be Stricken from the Complaint

In her Complaint, Plaintiff seeks "restitution to PLAINTIFF, and the other members of the CALIFORNIA CLASS." Complaint, ¶ 55. Separate and apart from this request for restitution, Plaintiff seeks the "disgorgement of DEFENDANT'S ill-gotten gains into a fluid fund." *See, e.g.*, Complaint, ¶ 21. However, the California Supreme Court has unequivocally held that "disgorgement of . . . profits is not an authorized remedy in an individual action under the UCL." *Korea Supply Co.*, 29 Cal.4th at 1140.

In *Korea Supply Co. v. Lockheed Martin Corp.*, the plaintiff sought the disgorgement of profits acquired by the defendant through its allegedly unfair business practices. *Id.* at 1142. The California Supreme Court reaffirmed the distinction that it had previously made between disgorgement and restitution, in that "disgorgement" is a broader remedy than restitution. *Id.* at 1144-45. The Supreme Court held that, although restitution was an available remedy under the UCL, disgorgement of money obtained through an unfair business practice is an available remedy in a representative and an individual UCL action *only to the extent that it constitutes restitution*. *Id.* at 1145 (emphasis added). As such, although unpaid wages are recoverable under the UCL as restitution, disgorgement of profits is not. After *Korea Supply*, courts have held that disgorgement of profits into a fluid recovery fund is also not available in a class action under the UCL. *See, e.g., Feitelberg v. Credit Suisse First Boston, LLC*, 134 Cal.App.4th 997, 1018 (2005) ("The question here is whether the UCL permits nonrestitutionary fluid class recovery. The answer is 'no.'"). Therefore, Plaintiff's request for and references to disgorgement of "ill-gotten gains" into a fluid recovery fund must also be stricken from the Complaint.

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1 **E. Plaintiff Cannot Recover “Regular Compensation” Under the California**
 2 **Labor Code Or FLSA And All Such References Should Be Stricken from the**
 3 **Complaint**

4 Plaintiff’s second cause of action seeks both “regular and overtime compensation” under
 5 the California Labor Code, based on Defendant’s alleged misclassification of her as an exempt
 6 employee. *See* Complaint, ¶¶ 73, 74. Similarly, Plaintiff’s sixth cause of action seeks both
 7 overtime compensation and “regular compensation” under the FLSA. *See* Complaint, ¶¶ 105,
 8 114, 117, 118. Neither cause of action includes a minimum wage claim. Plaintiff contends that
 9 she was not paid “for all hours actually worked, including time spent attending meetings,
 10 monitoring DEFENDANT’S equipment and waiting for and responding to technical support
 11 requests during meal periods.” Complaint, ¶ 105. However, Plaintiff cannot seek “regular
 12 compensation” under the Labor Code, because the Labor Code provides for only those claims that
 13 are statutorily enumerated, such as claims for overtime wages, minimum wages, and meal and
 14 rest break premium pay. *See, e.g.*, Labor Code § 1194, 226.7. Similarly, the FLSA provides for
 15 only two types of wage claims: overtime claims and minimum wage claims. *See* 29 U.S.C. §§
 16 206 (minimum wage provisions), 207 (overtime provisions). Indeed, an employer’s alleged
 17 failure to pay an employee her regular rate of pay is a matter of contract law, not a violation of
 18 statute. *See Earley v. Superior Court*, 79 Cal.App.4th 1420, 1430 (2000) (distinguishing between
 19 statutory claims for overtime and minimum wages and claims for straight time wages, because
 20 “straight time wages (above the minimum wage) are a matter of private contract between the
 21 employer and the employee”). Because neither the Labor Code nor FLSA provide for the
 22 recovery of unpaid straight time wages, Plaintiff’s attempts to recover unpaid “regular
 23 compensation” under her Labor Code and FLSA claims must be stricken.

23 **F. The Court Should Strike All Language Concerning Purported Claims Not**
 24 **Supported By Any Allegations In The Complaint**

25 A plaintiff must plead factual allegations sufficient “to raise a right to relief above the
 26 speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A plaintiff must
 27 provide “more than labels and conclusions, and a formulaic recitation of the elements of the cause
 28 of action will not do.” *Id.*; *see also Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1953 (2009) (holding that

1 the pleading requirements stated in *Twombly* apply to “all civil actions”). Here, Plaintiff’s
 2 Complaint contains three stray references, none of which is supported by *any* factual allegations
 3 whatsoever, to the indemnification of business expenses and Labor Code section 450. These
 4 allegations should be stricken as immaterial and impertinent. *See* F.R.C.P. 12(f) (“The court may
 5 strike from a pleading . . . any redundant, immaterial, impertinent, or scandalous matter.”).

6 Plaintiff’s Complaint does not contain a claim, much less supporting factual allegations,
 7 for indemnification of business expenses. Nevertheless, in paragraph 39(g) of her Complaint,
 8 Plaintiff alleges that a common question of law and fact is “[w]hether DEFENDANT unlawfully
 9 failed to tender full payment and/or indemnification for all business expenses incurred as a
 10 consequence of performing their work for DEFENDANT.” In addition, in the Prayer portion of
 11 her Complaint, Plaintiff requests “[r]eimbursement of all necessary expenditures under this
 12 section plus interest, which shall accrue from the date on which the employee incurred the
 13 necessary expenditure or loss.” Complaint, Prayer, ¶ 2(G). These references should be stricken
 14 from the Complaint as immaterial and impertinent matter, because Plaintiff’s Complaint does not
 15 contain any claim for indemnification of business expenses. Moreover, the Complaint is devoid
 16 of *any* factual allegations supporting a claim for indemnification of business expenses.

17 In addition, Plaintiff’s first cause of action mentions, in passing, California Labor Code
 18 section 450 as a basis for her UCL claim. Complaint, ¶ 51. However, the Complaint contains no
 19 factual allegations to support a claim under section 450, which states that “[n]o employer . . . may
 20 compel or coerce any employee . . . to patronize his or her employer, or any other person, in the
 21 purchase of any thing of value.” Accordingly, Plaintiff’s reference to Labor Code section 450
 22 should be stricken from the Complaint.

23 **III. CONCLUSION**

24 For all the foregoing reasons, Lockheed Martin respectfully requests, pursuant to Rule
 25 12(f), that this Court strike from Plaintiff’s Complaint all references to injunctive relief; all
 26 requests for penalties, damages, and disgorgement of money into a fluid recovery fund under the
 27 UCL claim; all references to the recovery of regular compensation under the Labor Code and

1 FLSA; and all language concerning indemnification and reimbursement for business expenses,
2 and Labor Code section 450.

3 Dated: August 25, 2009

MORGAN, LEWIS & BOCKIUS LLP

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5 By s/Donna Mo
6 Donna Mo
7 Attorneys for Defendant
8 LOCKHEED MARTIN CORPORATION
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